



5001-06-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 229 and 252**

**[Docket DARS-2019-0036]**

**RIN 0750-AK13**

**Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause "Tax Relief" (DFARS Case 2018-D049)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of an existing DFARS clause to include the text of another DFARS clause on the same subject, in an effort to streamline contract terms and conditions for contractors, pursuant to action taken by the DoD Regulatory Reform Task Force.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2018-D049, using any of the following methods:

- o *Regulations.gov:* <http://www.regulations.gov>. Search for

"DFARS Case 2018-D049." Select "Comment Now" and follow the instructions provided to submit a comment. Please include "DFARS Case 2018-D049" on any attached documents.

- o *Email:* *osd.dfars@mail.mil*. Include DFARS Case 2018-D049 in the subject line of the message.

- o *Fax:* 571-372-6094.

- o *Mail:* Defense Acquisition Regulations System, Attn: Carrie Moore, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Carrie Moore, telephone 571-372-6093.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This rule proposes to modify DFARS clause 252.229-7001, Tax Relief, to incorporate the information included in DFARS clause 252.229-7000, Invoices Exclusive of Taxes or Duties. Combining these clauses will result in DFARS clause 252.229-7000 being removed from the DFARS.

## **II. Discussion and Analysis**

The U.S. Government is eligible for relief from several taxes and duties as a result of various treaties and agreements with foreign governments. To address this relief, the Federal Acquisition Regulation (FAR) prescribes the use of FAR clause 52.229-6, Taxes-Foreign Fixed-Price Contracts, and FAR 52.229-8, Taxes-Foreign Cost-Reimbursement Contracts, in solicitations and contracts expected to exceed the simplified acquisition threshold when a fixed-price or cost-reimbursement contract is contemplated and the contract will be performed wholly or in part in a foreign country. These FAR clauses provide offerors and contractors with information on the application of foreign taxes and duties, as they relate to Federal contracts. Specifically, these clauses advise offerors and contractors that contract prices shall not include taxes and duties that are not applicable to the U.S. Government, as a result of such treaties or agreements.

DFARS clause 252.229-7001 is included in solicitations and contracts when a contract will be awarded to a foreign concern and contract performance occurs in a foreign country. This clause supplements the FAR clauses by requiring offerors to list each of the taxes and duties, as well as its accompanying rate or percentage, that are excluded from the contract price; and,

requiring the contractor to include certain price and tax information in each invoice to the Government.

As a result of the FAR clauses and DFARS clause 252.229-7001, offerors are aware that such taxes and duties should not be included in proposed prices under fixed-price or cost-reimbursement contracts performed in a foreign country. The additional information required by DFARS clause 252.229-7001 assists contracting officers in verifying that all applicable duties and taxes are excluded from proposed prices prior to contract award. The information also helps DoD and the contractor validate and ensure all taxes and duties, from which relief is available under the contract, are excluded from the invoiced prices.

DFARS clause 252.229-7000 is included in fixed-price solicitations and contracts that will be awarded to a foreign concern. The clause prohibits the contractor from including taxes or duties, for which relief is available, in invoices submitted for payment under the contract. Certain duties and taxes are commonly included in the price of an item and can be inadvertently overlooked during the invoicing and payment process. The clause was implemented to reinforce the prohibition on including such taxes or duties when preparing an invoice that contains fixed price items.

A separate DFARS clause 252.229-7000 is no longer necessary. The FAR clauses and DFARS clause 252.229-7001 are included in all contracts under which the U.S. Government may obtain foreign tax and duty relief. The text of DFARS 252.229-7000 and 252.229-7001 can be combined, while still conveying the same message and reaching the same community of contractors. As a result, this rule modifies DFARS clause 252.229-7001 to include the text of DFARS clause 252.229-7000 and removes DFARS clause 252.229-7000 from the DFARS.

Modification of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda," which established a Federal policy "to alleviate unnecessary regulatory burdens" on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the *Federal Register* at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on these clauses. Subsequently, the DoD Task Force reviewed the requirements of DFARS clause 252.229-7000 and 252.229-7001 and determined that the clauses could be combined.

### **III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, including Commercially Available Off-The-Shelf Items**

This proposed rule does not create any new provisions or clauses, nor does it impose any new requirements on contracts at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items.

### **IV. Executive Orders 12866 and 13563**

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 20, 1993. This rule is not a major rule as defined at 5 U.S.C. 804.

### **V. Executive Order 13771**

This rule is not expected to be subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

## **VI. Regulatory Flexibility Act**

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule is not creating any new requirements or changing any existing requirements and the rule only impacts foreign contractors. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

This rule proposes to modify DFARS clause 252.229-7001, Tax Relief, to incorporate the information included in DFARS clause 252.229-7000, Invoices Exclusive of Taxes or Duties. Combining these clauses will result in DFARS clause 252.229-7000 being removed from the DFARS, pursuant to action taken by the Regulatory Reform Task Force.

The objective of this proposed rule is to streamline DoD contract terms and conditions and contractor responsibilities pertaining to foreign taxes and duties. The modification of these DFARS clauses supports a recommendation from the DoD Regulatory Reform Task Force under Executive Order 13771, "Enforcing the Regulatory Reform Agenda."

This rule is combining two existing clauses that address the same topic into a single comprehensive clause. These clauses apply to solicitations and contracts awarded to a foreign concern for contract performance in a foreign country. This

rule is not expected to impact small business entities, because this rule only applies to foreign entities. The Small Business Administration (SBA) identifies a "small business" as "a business entity organized for profit, with a place of business located in the United States, and which operated primarily within the United States or which makes a significant contribution to the U.S. economy through the payment of taxes or use of American products, materials, or labor" (13 CFR 121.102(a)). This rule only applies to foreign contractors, which do not meet the SBA definition of "small business" entities.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses.

This rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the proposed rule that would meet the proposed objectives.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must



submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018-D049) in correspondence.

## **VII. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

### **List of Subjects in 48 CFR Parts 229 and 252**

Government procurement.

**Jennifer Lee Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 229 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 229 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

#### **PART 229—TAXES**

##### **229.402-1 [Removed]**

2. Remove section 229.402-1.

#### **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

##### **252.229-7000 [Removed and Reserved]**

3. Remove and reserve section 252.229-7000.

4. Amend section 252.229-7001 by-

- a. Removing the clause date "(SEP 2014)" and adding "(DATE)" in its place;
- b. Revising paragraph (b);
- c. In Alternate I-
  - i. Removing the clause date of "(SEP 2014)" and adding "(DATE)" in its place; and
  - ii. Revising paragraph (b).

The revisions read as follows:

**252.229-7001 Tax Relief**

\* \* \* \* \*

(b) Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available. The Contractor's invoice shall list separately the gross price, amount of tax deducted, and net price charged.

\* \* \* \* \*

*Alternate I.* \* \* \*

\* \* \* \* \*

(b) Invoices submitted in accordance with the terms and conditions of this contract shall be exclusive of all taxes or duties for which relief is available. The Contractor's invoice shall list separately the gross price, amount of tax deducted, and net price charged.

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